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MICHIGAN HOUSE OF REPRESENTATIVES

KEVIN A. ELSENHEIMER

STATE REPRESENTATIVE

ASSOCIATE SPEAKER PRO TEMPORE

VICE-CHAIR, LOCAL GOVERNMENT
AND URBAN POLICY COMMITTEE
VICE-CHAIR, OVERSIGHT,
ELECTIONS, AND ETHICS COMMITTEE
MEMBER, EDUCATION COMMITTEE
MEMBER, JUDICIARY COMMITTEE
MEMBER, NATURAL RESOURCES,
GREAT LAKES, LAND USE, AND
ENVIRONMENT COMMITTEE

March 15, 2006

Office of Financial & Insurance Services
Linda Watters, Insurance Commissioner
611 W. Ottawa Street, 3rd Floor
Lansing, MI 48933

Dear Ms. Watters,

I would like to take this time to ask for your assistance in resolving a matter which has been brought to my attention pursuant to recent testimony given before the House Tort Reform Committee. As chairman of this committee, I would appreciate your response to the following request.

During the course of testimony taken on the history of tort reform, it was brought to light that your agency hasn't complied with MCL 500.2477d which requires the Office of Financial and Insurance Services to issue a report every two years to describe the conditions of the malpractice insurance market and make recommendations. I have attached a copy of this section of law for your review.

After committee deliberations on this subject matter, I followed up and confirmed with representatives from OFIS that this report has not been issued since 1989. It was explained to my staff that your department no longer feels that this reporting requirement is necessary and a problem no longer exist.

Considering that medical malpractice continues to be a matter of great concern within our healthcare system, I would like to encourage your department to reconsider its position. As you may be aware, and as highlighted in the attached Detroit News article, Michigan continues to have areas with some of the nation's highest rates for medical malpractice insurance. Furthermore, the rate of malpractice claims in Michigan still remains one of the highest in the country. Considering that OFIS is expected to offer specific recommendations on this subject matter in addition to compiling specific information, I hope you would agree that this report would prove to be most helpful to the task give to me and the committee I chair.

Therefore, I would respectfully request that OFIS comply with this statutory obligation. I have enclosed a Michigan House of Representatives resolution that I am willing to introduce if your department fails to respond to my request. Thank you for your time and consideration.

Sincerely,

Kevin A. Elsenheimer
State Representative
105th House District

cc: Members of the House Tort Reform Committee

- (b) The name of the attorney.
- (c) The date of the injury.
- (d) The date of the filing of the complaint, if any.
- (e) The nature of the complaint.
- (f) The amount of any judgment.
- (g) The amount of any settlement, whether negotiated pursuant to an action or without the filing of a complaint for damages.
- (h) Of the amounts provided in subdivisions (f) and (g), the amount attributable to economic damages and noneconomic damages.
- (i) Any other information the commissioner may require.

(4) The insurance commissioner shall retain the information and maintain the files in the form and for a period as he or she shall determine necessary in his or her sole discretion. The commissioner shall maintain the data and information filed in accordance with this section as confidential records and shall not release the data and information except for bona fide research, educational, licensing, actuarial, department of social services subrogation, or legislative purposes. However, the commissioner shall not release the name of any person that is part of the data and information filed in accordance with this section. The commissioner in his or her sole discretion shall determine the validity of any request for the information.

(5) There is no liability on the part of, and a cause of action of any nature shall not arise against, an attorney reporting under this section or the attorney's agents or employees, or the commissioner or his or her representatives, for any action taken by them pursuant to this section.

History: Add. 1986, Act 173, Imd. Eff. July 7, 1986;—Am. 1994, Act 438, Eff. Mar. 30, 1995.

Popular name: Act 218

500.2477d Publication of report by commissioner.

Sec. 2477d. The commissioner shall publish a report every 2 years which does all of the following:

- (a) Describes the condition of the medical malpractice insurance market in this state.
- (b) Contains information regarding specific claims experiences filed with the commissioner pursuant to sections 2477 to 2477c.
- (c) Makes recommendations concerning the medical malpractice insurance market in this state.

History: Add. 1986, Act 173, Imd. Eff. July 7, 1986.

Popular name: Act 218

500.2478 Violation of chapter; imposition and disposition of civil fine; suspension or revocation of license.

Sec. 2478. (1) Subject to subsection (3), the commissioner may, if he or she finds that any person or organization has violated a provision of this chapter, previous to the date of his or her finding, impose a civil fine of not more than \$300.00 for each violation, and if the violation is wilful, the commissioner may impose a civil fine of not more than \$1,500.00 for each violation. A civil fine shall not be imposed for an offense that was committed more than 12 months prior to the date of the commissioner's findings. A fine collected under this subsection shall be turned over to the state treasurer and credited to the general fund of the state.

(2) The commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the commissioner within the time specified by the order, or any extension of the order which the commissioner may grant, but the suspension shall not affect the validity or continued effectiveness of rates previously filed and effective. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal from the order has expired, or, if an appeal has been taken, until the order has been affirmed. The commissioner may determine when a suspension of license shall become effective, and the suspension shall remain in effect for the period fixed by him or her, unless he or she modifies or rescinds the suspension, or until the order upon which the suspension is based is modified, rescinded, or reversed.

(3) A civil fine shall not be imposed and a license shall not be suspended or revoked except upon a written order of the commissioner, specifying the alleged violation and stating his or her findings, made after a hearing held upon not less than 10 days' written notice to the person or organization. An order issued by the commissioner pursuant to this section shall not require the payment of civil fines exceeding \$10,000.00.

History: 1956, Act 218, Eff. Jan. 1, 1957;—Am. 1984, Act 7, Imd. Eff. Feb. 1, 1984.

Popular name: Act 218

500.2482 Insurer or rating organization aggrieved by order without hearing; hearing, court review.

Rendered Wednesday, February 22, 2006

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Special health courts could heal state's liability costs

Alan M. Mindlin /

March 2, 2006

Despite leading the nation in enacting tort reform in 1994, the number of malpractice claims per 1,000 doctors in Michigan is among the highest in the nation. Wayne County physicians pay the second highest medical liability insurance premiums in the country. This isn't good news for providers or consumers of health care.

The bad news about Michigan's medical liability climate comes even though we have some of the nation's best doctors and hospitals. The University of Michigan Medical Center in Ann Arbor ranks 11th in the nation, according to U.S. News & World Report. And four other Michigan hospitals -- three based in Wayne County -- rank highly as well: Henry Ford, Harper University, and Children's hospitals in Detroit and Beaumont Hospital in Royal Oak.

Political leaders won't act

Yet our leaders in Washington and Lansing have yet to act. In an effort to move the process along before the legal system puts the health care system on life support, I would like to suggest a solution that is gaining support nationwide: special health courts.

A bipartisan legal reform group called Common Good has developed an intelligent proposal that is just the prescription we need to cure the medical liability crisis. Special courts already exist for tax disputes, workers' compensation and vaccine liability, among other issues. Why not for health care?

Special health courts have been endorsed by a diverse group of leaders. U.S. Senate Majority Leader Bill Frist, R-Tenn., and Forbes magazine publisher Steven Forbes have expressed support for the idea. So have U.S. Sen. Max Baucus, D-Mont., and the Progressive Policy Institute, known in the 1990s as President Clinton's "idea mill."

The overriding problem with our system of medical justice is that it is unpredictable. Jury awards vary wildly. One study shows, surprisingly, that few patients truly injured by medical mistakes actually file lawsuits, in part because costly legal proceedings can drag on for years.

Lawsuits require experts

However, as many as 80 percent of the claims that are filed involve situations where experts believe the doctor did nothing wrong. A poor medical outcome, rather than negligence on the doctor's part, is often the trigger to a sizable award.

Today, juries and trial judges without medical or scientific training consider medical issues that are complex and technical, including the key question in most malpractice cases: Did the doctor comply with the appropriate standards of care? It's no surprise that legal outcomes are so unpredictable.

Special health courts would include judges dedicated solely to addressing health care cases and trained in the issues that they would be facing. These judges would define and interpret standards of care in malpractice cases, relying on neutral experts who would be hired and examined by the judge. The experts would be paid by the court so as not to be beholden to either side in the dispute.

These health courts would ensure that injured patients are compensated and that less of the

settlement money goes to lawyers. Health courts also would help increase candor among health professionals. With judges making reliable decisions about standards of care, and awards no longer varying so wildly, doctors and nurses would have less to fear from admitting mistakes.

Now it's time for our elected leaders to act.

Alan M. Mindlin, M.D., is president of the Michigan State Medical Society. Mail letters to The News, Editorial Page, 615 W. Lafayette, Detroit, MI 48226, fax them to (313) 222-6417 or e-mail them to letters@detnews.com.

Rep. Elsenheimer offered the following resolution:

House Resolution No.

A resolution to urge the Office of Financial and Insurance Services to carry out its statutory responsibilities to issue a report on the conditions of the medical malpractice insurance market.

Whereas, With the enactment of 1986 PA 173, which amended the Insurance Code of 1956, 1956 PA 218, the Office of Financial and Insurance Services (OFIS) was charged with responsibility to publish a report every two years on the state of Michigan's medical malpractice insurance market. The Office of Financial and Insurance Services has issued this report only once, in 1989; and

Whereas, Under MCL § 500.2477d, the insurance commissioner is required to publish a report every 2 years to describe the conditions of the malpractice insurance market. This report is to contain information on specific claims experiences and recommendations concerning medical malpractice insurance. The 1989 report was very thorough in scope and presented more than a dozen findings that summarized key points; and

Whereas, In spite of significant efforts at tort reform over the years in Michigan, medical malpractice continues to be a matter of concern within our health care system. At a time when health care costs are becoming an even greater factor in all aspects of our economy, Michigan continues to have areas with some of the nation's highest rates for medical malpractice insurance. The rate of malpractice claims in Michigan remains one of the highest in the country as well. Clearly, the condition of the malpractice insurance market is essential information for sound public policy decision making; and

Whereas, Other sections of the Insurance Code require insurers to provide a wide range of information to OFIS. The insurers are continuing to comply with this requirement; and

Whereas, The Michigan Legislature considered legislation in 2001-2002 to eliminate the requirement for OFIS to publish the medical malpractice insurance market report. In discussions on House Bill Nos. 5311 and 5312, the argument was raised that the report was not needed and that the magnitude of the liability insurance problem did not justify the work entailed. However, the arguments against the bills cited the need for this information, especially in the era of term limits. The Legislature did not enact the bills and consciously maintained the requirement for the report. As we now examine tort reform again, the information required in the report may be most relevant; and

Whereas, If there is a need to revisit the idea of the report and possibly to modify what is required, that would be an appropriate discussion. However, in the meantime, the requirement for the Insurance Code to issue this report remains in full force; now, therefore, be it

Resolved by the House of Representatives, That we urge the Office of Financial and Insurance Services to carry out its statutory responsibilities to issue a report on the conditions of the medical malpractice insurance market; and be it further

Resolved, That copies of this resolution be transmitted to the Office of Financial and Insurance Services.